

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

---

FEDERAL TRADE COMMISSION, et al.,	)	C23-1495-JHC
	)	
Plaintiffs,	)	SEATTLE, WASHINGTON
	)	
v.	)	June 6, 2024 -
	)	2:00 P.M.
	)	
AMAZON.COM, INC., a corporation,	)	
	)	STATUS CONFERENCE
	)	
Defendant.	)	
	)	
	)	

---

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN H. CHUN  
UNITED STATES DISTRICT JUDGE

---

APPEARANCES:

For the Plaintiff FTC:	Edward H. Takashima Federal Trade Commission 600 Pennsylvania Avenue N.W. Washington, DC 20580
For the State of Oregon and Plaintiff States:	Timothy D. Smith Oregon Department of Justice 1162 Court Street N.E. Salem, OR 97301-4096
For the Defendant:	Heidi K. Hubbard Williams & Connolly 680 Maine Avenue S.W. Washington, DC 20024

1 THE COURT: Please be seated.

2 THE CLERK: This is Case No. C23-1495, Federal Trade  
3 Commission, et al. versus Amazon.com, Inc.

4 Would counsel for the plaintiff, then the state, and then  
5 Amazon please make your appearances for the record?

6 MR. TAKASHIMA: Good afternoon, Your Honor. This is Ed  
7 Takashima for the Federal Trade Commission.

8 MR. SMITH: Good afternoon, Your Honor. This is Tim  
9 Smith from the Oregon Department of Justice. I'm appearing on  
10 behalf of the plaintiff states and territories who are acting by  
11 and through their respective Attorneys General.

12 MS. HUBBARD: Good afternoon, Your Honor.  
13 (A recorded message interruption from the conference call line.)

14 THE COURT: Ms. Hubbard, I believe it was --

15 MS. HUBBARD: Yes.

16 THE COURT: -- I think you were just interrupted.

17 MS. HUBBARD: Yes. I'm so sorry, Your Honor. It's  
18 Heidi Hubbard from Williams & Connolly. I'm appearing this  
19 afternoon for Amazon. Good afternoon.

20 THE COURT: Good afternoon.

21 Good afternoon to all of you. As you know, this is a status  
22 conference in this matter. I am in an open courtroom, the  
23 lawyers are appearing telephonically, and there is public access  
24 to this hearing via the court's teleconference line. And this is  
25 how I plan to conduct future status conferences in this matter.

1 I'm sure I will hear if a party has an objection.

2 I want to start off by thanking the parties for the joint  
3 status report, which I have reviewed. I have a short list of  
4 items for brief discussion, but, first, I will give the parties a  
5 chance to report on anything that was not in the joint status  
6 report, starting with you, Mr. Takashima, for the FTC.

7 MR. TAKASHIMA: Thank you, Your Honor.

8 I think we have covered our view of the status of the case in  
9 the joint status report. Nothing to add.

10 THE COURT: Mr. Smith?

11 MR. SMITH: Thanks, Your Honor. Tim Smith. The states  
12 have nothing to add to the joint status report.

13 THE COURT: Ms. Hubbard?

14 MS. HUBBARD: Thank you, Your Honor. I have nothing to  
15 add to the joint status report. I'm hoping to have a brief  
16 conversation about coordination at some point this afternoon.

17 THE COURT: Okay. Thank you. And I think I will turn  
18 to my list of items.

19 First of all -- I'm sorry. There's some background noise,  
20 and so if counsel can try to reduce that background noise, that  
21 would be great.

22 (The court and the in-court deputy clerk confer.)

23 THE COURT: And, counsel, you can now unmute yourselves.

24 First of all, I want to note that the plaintiffs requested  
25 that the court prioritize ruling on the motion to enter an ESI

1 order, and Amazon followed up with a thought about addressing the  
2 motion to dismiss. And I just want to thank both sides for their  
3 patience and let you know that when I started with this court a  
4 little over a couple of years ago, we were given quite a backlog  
5 of motions, and we are getting caught up, but it's still taking  
6 more time to get these things out the door than I wish. So,  
7 again, thanks for your patience.

8 I want to turn to motions to seal and any motions to close  
9 the courtroom. I want to take this opportunity to emphasize the  
10 importance of public access to these proceedings, and I wanted to  
11 let the lawyers know that I will be continuing to closely  
12 scrutinize motions to seal and I will do so for any motion to  
13 close the courtroom.

14 My next item is what I'm calling "Economics Day," a potential  
15 economics day. I think, ages ago, it used to be called something  
16 like "hot-tubbing." But I'd like to be as educated as possible  
17 regarding the economic theories in this case, and to that end,  
18 Economics Day would be a hearing where I would hear from both  
19 sides' economists about the theories being advanced in this case.  
20 And so my questions for counsel today are, is this a good idea,  
21 because if you agree, I would like the parties to meet and confer  
22 regarding the date or dates of an Economics Day or days and the  
23 ground rules for such a hearing. And if you can't agree, you  
24 could send in proposals.

25 So I will start with you, Mr. Takashima.

1 MR. TAKASHIMA: Thank you, Your Honor.

2 I think it -- we're happy to do whatever I think the court  
3 would find helpful. So if the court would find some kind of  
4 economic presentation useful to get up to speed on the case, I  
5 think that is certainly something we're happy to talk to Amazon  
6 about and come up with some proposals.

7 THE COURT: Thank you.

8 Mr. Smith?

9 MR. SMITH: For the states, Your Honor, Tim Smith. We  
10 support the FTC's position.

11 THE COURT: Okay. Ms. Hubbard?

12 MS. HUBBARD: (No audible response.)

13 THE COURT: Hello, Ms. Hubbard. Are you unmuted?

14 MS. HUBBARD: Your Honor, I apologize, I'm clearly  
15 having technical difficulties today.

16 I was saying I think it's a great idea to have an Economics  
17 Day, and we would be happy to confer with the plaintiffs and come  
18 up with a proposal on a protocol, as well as proposed timing for  
19 this. It may make sense to do this not long after Labor Day,  
20 early fall, if that were to work for the court, but we would  
21 definitely want to do it at a time that worked for Your Honor.

22 THE COURT: Okay. Thank you.

23 And by when do you think the parties would be able to submit  
24 a proposal for the court?

25 MS. HUBBARD: Your Honor, I would propose that we have

1 two to three weeks to confer and come to some kind of agreement  
2 on what makes sense, if that would be acceptable to Your Honor.

3 THE COURT: Sure. Three weeks out would be June 27th;  
4 is that correct?

5 THE CLERK: Yes.

6 MS. HUBBARD: Yes.

7 THE COURT: Mr. Takashima, does that work for you?

8 MR. TAKASHIMA: That works for us, Your Honor. I think  
9 that makes sense.

10 THE COURT: How about you, Mr. Smith?

11 MR. SMITH: The same, Your Honor. Thank you.

12 THE COURT: Okay. Thank you very much.

13 The next item is Docket No. 220. That is a motion to seal by  
14 Amazon. It's pending. The plaintiffs' reply, the reply -- or  
15 their response, I'm sorry, the plaintiffs responded, and the  
16 response is at Docket No. 236. It looks like there's no  
17 objection. And there's also a request to permanently seal  
18 portions of Exhibit 13. So I'm wondering whether there's any  
19 disagreement on this particular motion, which looks meritorious  
20 to me.

21 Ms. Hubbard?

22 MS. HUBBARD: Thank you, Your Honor. Heidi Hubbard for  
23 Amazon.

24 The plaintiffs have agreed with the limits of sealing that  
25 we've proposed, so with that limited sealing, I think that the

1 parties are in agreement.

2 THE COURT: Okay. There's also a request that I  
3 permanently seal the subject line of Exhibit 13. And by the way,  
4 I'm getting a little bit ahead myself. This motion is noted for  
5 tomorrow, but I thought that if there's no disagreement here, I  
6 could get another order out the door.

7 So my question is, does Amazon object to the request to  
8 permanently seal the subject line of Exhibit 13 filed with the  
9 Stojilkovic declaration, because it refers to a nonpublic FTC  
10 investigation?

11 MS. HUBBARD: We do not object, Your Honor.

12 THE COURT: So it sounds like I can go ahead and enter  
13 the order then?

14 MS. HUBBARD: Yes. Thank you.

15 THE COURT: Okay. And are plaintiffs in agreement,  
16 Mr. Takashima?

17 MR. TAKASHIMA: Yes, Your Honor.

18 THE COURT: Mr. Smith?

19 MR. SMITH: Thank you, Your Honor. Yes, we agree.

20 THE COURT: Okay. My very last item is just to remind  
21 the parties of something. As you know, this is a big docket, and  
22 it gets bigger, seemingly, every day. It's real helpful for the  
23 court if you mention docket numbers in your filings with the  
24 court. Like, for example, if your brief is a response to a  
25 motion, to put in your introduction the docket number of the

1 motion you are responding to. The same thing with replies and  
2 the same thing with respect to conclusions in briefing. It just  
3 helps the court more quickly locate related pleadings.

4 Does that make sense?

5 MS. HUBBARD: Yes, Your Honor.

6 MR. TAKASHIMA: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. SMITH: Yes, Your Honor.

9 THE COURT: So is there anything anyone else would like  
10 to raise today?

11 MS. HUBBARD: Your Honor, Heidi Hubbard for Amazon.

12 I was going to give a brief update on coordination because I  
13 know it's important to Your Honor, given the related private  
14 cases in front of Your Honor.

15 THE COURT: Yes.

16 MS. HUBBARD: But I think there is a good update in the  
17 joint status report itself, and I think we have come up with a  
18 way with respect to the private cases -- and, obviously, those  
19 plaintiffs are not here today -- to make an adjustment that would  
20 align those cases and permit meaningful coordination.

21 I was going to update Your Honor that third parties, because  
22 they're going to bear a lot of the burden if we don't have  
23 meaningful coordination, are speaking up and asking for  
24 coordination, and given the good progress that we have already  
25 made, we expect to be able to come to the court in the near term



1 with, hopefully, an agreed-to proposal on coordination, which I  
2 think will help a lot as we get going on discovery and as we have  
3 third parties speaking up and asking for coordination.

4 THE COURT: All right. Thank you for that update.

5 And it sounds like nobody else has anything to raise, so I  
6 just want to thank you, counsel.

7 MR. TAKASHIMA: Your Honor, if I may?

8 THE COURT: Yes.

9 MR. TAKASHIMA: I'm sorry. This is Ed Takashima for the  
10 FTC.

11 If the court is so inclined, if the court has any even  
12 preliminary views on any of the discovery issues we raised in the  
13 joint status report, and, in particular, I think the issues  
14 around the reproduction of documents that have been produced  
15 already in California or our interrogatory to Amazon, that would  
16 be, I think, helpful to inform further discussion between the  
17 parties. And then after that, I have one more ask, but I will  
18 stop there for a moment.

19 THE COURT: Yeah, I didn't address that because I didn't  
20 think that there was a ripe request for the court. Since you are  
21 asking for what I'm thinking, I will give you just a succinct  
22 answer, and that is that, you know, if what you are saying is  
23 true, if what FTC -- if what plaintiffs are saying is true  
24 regarding discovery in this matter, then I would be concerned,  
25 but I know that there are often two sides to the story on

1 disputes like this.

2 One thing that did catch my attention was the interrogatory  
3 regarding procompetitive justifications. I think that the issue  
4 of procompetitive justifications is something that hovers close  
5 to the heart of this case, and so I just wanted to let you know  
6 that I sort of raised my eyebrows when I saw that particular  
7 issue. But, again, I realize that there can be two sides to the  
8 story and that there's not yet an issue ripe for the court to  
9 decide.

10 MR. TAKASHIMA: Understood. Thank you, Your Honor.

11 THE COURT: Yep.

12 MS. HUBBARD: And, Your Honor, Heidi Hubbard on that for  
13 Amazon. There is indeed another side to this, and while I  
14 passionately agree that procompetitive justification is at the  
15 heart of this case because the practices under attack are so  
16 procompetitive, I don't think that the way the dispute is  
17 presented in the joint status report is fair or even, and we are  
18 working really hard to work with the plaintiff to meet and confer  
19 too so that we don't have to burden Your Honor with these  
20 disputes. And I hope that we can still get there and that  
21 they're not teed up for Your Honor in this way when there is  
22 actually a process for bringing disputes to Your Honor if we  
23 cannot get to a good place in the meet-and-confer process.

24 THE COURT: Understood.

25 Okay. Mr. Takashima, what's your next one?

1 MR. TAKASHIMA: My next one -- and, I'm sorry, I thought  
2 of one more, with the court's patience -- stepping back for a  
3 second regarding the court's inquiry about an Economics Day, are  
4 there any topics in particular you would like the parties to  
5 focus on? Should we be thinking about this particularly in the  
6 context of the motion to dismiss or the case at large or is there  
7 any kind of -- any guidance as to what would be most helpful for  
8 the court? I think that would be helpful for us when we go back  
9 and speak with Amazon.

10 THE COURT: It's the case at large. It's the case at  
11 large. And I guess I'm most interested in where there's the  
12 greatest amount of conflict between the different economic  
13 theories being advanced.

14 MR. TAKASHIMA: Understood. Thank you, Your Honor.

15 And then my last request, with the court's indulgence, I just  
16 wanted to raise for the court the possibility that the court  
17 might consider upping the tempo of these joint status conferences  
18 to have them every other month, at least while we're in fact  
19 discovery. I will say that I think the process of putting  
20 together the joint status report was helpful for the parties, and  
21 we were actually able to resolve a couple of issues just in the  
22 process of putting that together. And I think, more generally, I  
23 think more frequent conferences, balancing, of course, the burden  
24 it has to the court, are a good way to make sure that the case  
25 stays on track.

1 THE COURT: Okay. I'll think about that. Why don't the  
2 parties put something about that in the next joint status report  
3 before the next status conference; does that work?

4 MR. TAKASHIMA: That does, Your Honor. Thank you very  
5 much.

6 THE COURT: Okay. Ms. Hubbard, did you want to respond  
7 to that?

8 MS. HUBBARD: No. We want to do what's most helpful for  
9 the court. But we are happy to confer on this and put something  
10 in the joint status report for the next conference, which I  
11 believe is right after Labor Day.

12 THE COURT: Thank you.

13 Mr. Smith, anything?

14 MR. SMITH: Nothing further for -- nothing further, Your  
15 Honor.

16 THE COURT: Okay. Then I think that covers everything  
17 that folks wanted to discuss. And with that, we will be in  
18 recess, and I wish you all a happy weekend.

19 MS. HUBBARD: Thank you, Your Honor.

20 MR. TAKASHIMA: Thank you, Your Honor.

21 MR. SMITH: Thank you, Your Honor.

22 THE COURT: Thank you.

23 THE CLERK: All rise. Court is in recess.

24 (Adjourned.)

25

## C E R T I F I C A T E

I, Nickoline M. Drury, RMR, CRR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do certify that the foregoing is a correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter.

/s/ Nickoline Drury

Nickoline Drury